

J137-1096

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X	
E. Mishan & Sons, Inc.,	:
	:
Plaintiff,	:
	:
-against-	:
	:
Your Store Online LLC and Chris Reoch,	:
	:
Defendants.	:
----- X	

Civ. Action No.
08 CV 3071(BSJ)(DFE)
ECF Case

REPORT OF PARTIES' PLANNING CONFERENCE

The parties submit the following written report, pursuant to Fed. R. Civ. P. 26 (f):

1. Conference. A telephone conference was held on June 9, 2008. Present were Angelo Notaro, Esq. and John Zaccaria, Esq., attorneys for plaintiff E. Mishan & Sons, Inc. and Carl E. Person, Esq., attorney for defendants Your Store Online LLC and Chris Reoch. The parties jointly propose to the court the following:

2. Pleadings. The parties shall have until September 5, 2008 to add additional parties and amend pleadings.

3. Discovery.

- (1) Initial disclosures under Fed. R. Civ. P. 26 (a)(1) will be exchanged by June 19, 2008.
- (2) Discovery will be needed on the following subjects: defendants' use of the AB ROCKET trademark; dates of defendants' use of the AB

ROCKET trademark; all statements and/or representations by defendant regarding the defendants' allegedly infringing AB ROCKET product and AB SHUTTLE product ("defendants' products"), including source and accuracy of such statements and/or representations; all Web site usages of AB ROCKET known to defendants; advertisements for defendants' products, including television advertisements; telephone records, tape recordings of defendants for customer orders of defendants' products; customer orders received by or for defendants for defendants' products; complaints, cancelled orders, returns received by or for defendants for defendants' products; warranty fulfillment for defendants' products; all communications between defendants and others concerning the AB ROCKET and/or the AB ROCKET mark; defendants' disposition of AB ROCKET labels, advertisements, packaging and product bearing AB ROCKET; all inquiries received or sent by defendants concerning AB ROCKET; all instances of consumer confusion allegedly caused by defendants' use of AB ROCKET; import, purchase and sale of defendants' products by defendants; Internet Web sites with which defendant's products are advertised, marketed or offered for sale; paid placement and sponsored links for defendants' web sites, consumer clicks of said sponsored links and reports related thereto; consumer visits of defendants' web sites and reports related thereto; purchase of AB ROCKET as a search engine keyword by or for defendants;

communications relating to context and design of defendants' Internet Web sites that have used AB ROCKET in any manner; identities of web designers, web hosts of defendants' Internet web sites using AB ROCKET; storage facility for defendants' products; identities of persons knowledgeable of any of the foregoing; any and all proceedings in which any of the defendants is currently or has been involved; plaintiff reserves the right to supplement its categories of discovery based on the course of and information received from future discovery; whatever information plaintiff has concerning defendants and their website, product offerings, advertising, marketing; lawsuits and claims against plaintiff regarding the trademarks and other intellectual property at issue; plaintiff's enforcement or lack of enforcement of the trademarks at issue; plaintiff's expenses and gross profits as to sales of products/services using any of the trademarks or other intellectual property rights at issue; how damages were calculated by the plaintiff; all prior and subsequent lawsuits brought by the plaintiff (directly or by counterclaim) relating to any of the trademarks or other intellectual property rights at issue in this lawsuit.

- (3) Written reports from retained experts will be exchanged under Fed. R. Civ. P. 26 (a)(2) on February 9, 2009.
- (4) Rebuttal expert reports will be due on March 9, 2009.
- (5) Non-expert discovery cut-off date is March 9, 2009.

(6) Expert depositions shall be completed by April 6, 2009.

4. Dispositive Motions. Dispositive motions will be served and filed by May 11, 2009.

5. Trial.

(1) Final witness list, expert list and exhibit list shall be exchanged within thirty (30) days after issuance of the Court's ruling on a dispositive motion that does not dispose of all of the claims in the case or by August 14, 2009, whichever comes first.

(2) Objections to witness list, expert list and exhibit list shall be exchanged within two (2) weeks after exchange of the final witness list, expert list and exhibit list or by August 31, 2009, whichever comes first.

(3) Trial briefs, motions *in limine*, proposed jury instructions and voir dire or proposed findings of fact and conclusions of law shall be submitted within thirty (30) days after the exchange of objections to witness list, expert list and exhibit list or by September 30, 2009, whichever comes first.

(4) Objections to proposed jury instructions and voir dire shall be submitted within two (2) weeks of submission of the trial briefs, motions *in limine*, proposed jury instructions and voir dire or proposed findings of fact and conclusions of law or by October 15, 2009, whichever comes first.

(5) Anticipated length of trial is approximately three (3) days.

6. Settlement. Plaintiff will need discovery from defendants to reasonably discuss settlement.

7. Other Matters. A stipulation and proposed order for protecting confidential information will be prepared and submitted to the Court.

Dated: June 18, 2008

By: /s/ John Zaccaria
Angelo Notaro (AN-1306)
anotaro@notaromichalos.com
John Zaccaria (JZ-3157)
jzaccaria@notaromichalos.com
NOTARO & MICHALOS P.C.
100 Dutch Hill Road, Suite 110
Orangeburg, New York 10962
(845) 359-7700
Attorneys for Plaintiff
E. Mishan & Sons, Inc.

Dated: June 18, 2008

By: /s/ Carl Person
Carl E. Person (CP 7637)
carlpers@ix.netcom.com
325 W. 45th Street, Suite 201
New York, New York 10036-3803
(212) 307-4444
Attorney for Defendants
Your Store Online LLC and Chris Reoch